

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**ENTERED**

September 09, 2016

David J. Bradley, Clerk

THOMAS ROY KENNEDY	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO: H-16-2128
	§	
WILLIAM STEPHENS,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
Respondent.	§	

MEMORANDUM AND RECOMMENDATION

This petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 has been referred to this magistrate judge for report and recommendation (Dkt. 7). The court previously ordered Kennedy to show cause why his claims are not time-barred (Dkt. 8). Kennedy responded to the show cause order (Dkt. 9).

Kennedy's conviction became final when his time for seeking a writ of certiorari in the United States Supreme Court expired in 2009. His one-year statute of limitations under AEDPA expired in 2010, absent statutory or equitable tolling. Kennedy filed a state habeas application in January 2016 that was denied in March 2016. Because his state habeas application was filed years after the expiration of his federal limitations period it did not toll his limitation period. *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000).

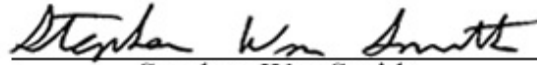
Kennedy has not presented grounds for equitable tolling of the federal statute of limitations. His show cause response asserts only a conclusory allegation that his constitutional rights have been violated. Kennedy makes no legal or factual assertions that warrant equitable tolling. The court recommends that petitioner's claims be denied with

prejudice as time-barred.

The court further finds that Kennedy has not made a substantial showing that he was denied a constitutional right or that it is debatable whether this court is correct in a procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, the court recommends that a certificate of appealability not issue.

The parties have 14 days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

Signed at Houston, Texas on September 7, 2016.



Stephen Wm Smith
United States Magistrate Judge